

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

TYRONE LONDALE TALTON, #769352	§	
VS.	§	CIVIL ACTION NO. 2:05cv303
DIRECTOR, TDCJ-CID	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Harry W. McKee. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Respondent filed objections to the Report. This Court made a *de novo* review of Respondent's objections and determined that they lack merit.

Respondent re-asserts his argument that Petitioner failed to raise the claim that the prosecution failed to disclose lab results showing that the alleged cocaine turned out to be ninety-nine percent caffeine. The Report and Recommendation noted that the record, however, shows that Petitioner raised this claim in his state application for writ of habeas corpus. *Ex parte Talton*, WR-41,653-02 at 8.

Respondent contends that in Petitioner's state application for writ of habeas corpus, he stated that the prosecution knew that the alleged cocaine turned out to be ninety-nine percent caffeine, but that Petitioner did not contend that the prosecution failed to disclose those lab results. The records show that Petitioner's statement that the prosecution knew that the alleged cocaine turned out to be ninety-nine percent caffeine was stated under the section entitled "What

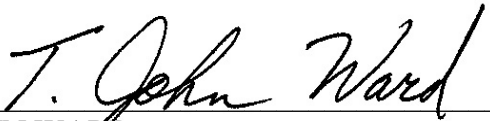
are the FACTS . . .” under “Ground Number Four,” which was “Conviction obtained by the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to defendant.” Petitioner’s omission of a specific reference to “lab results” in his state application does not render the claim unexhausted.

This Court finds that the Magistrate Judge’s findings and conclusions are correct, and adopts them as the Court’s findings and conclusions. The Court therefore

**ORDERS, ADJUDGES, and DECREES** that this action is **DISMISSED WITH PREJUDICE**; and

**ORDERS** that all motions not previously ruled on are denied.

SIGNED this 13th day of January, 2006.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE